Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

In RE: LEONARD W. KROUNER,

Petitioner.

On Petition For Writ Of Certiorari
To The District Of Columbia Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. In a reciprocal attorney discipline matter, do the Full Faith and Credit Clause and 28 U.S.C. § 1738 permit the District of Columbia Court of Appeals to impose a more severe sanction than two previous final decisions by other states based on the same facts, which occurred in New York in a New York proceeding, without first according the findings made by the other states a high degree of respect?

II. Were Petitioner's Due Process rights violated when the District of Columbia Court of Appeals ruled that Petitioner's New York misdemeanor conviction constituted a "serious crime," and suspended Petitioner's license to practice law, without giving Petitioner notice that the serious crime question was being reconsidered after a prior District of Columbia Court of Appeals decision in Petitioner's favor, without conducting a hearing, and without considering the findings by two sister states that Petitioner's pre-investigation restitution to the victim of Petitioner's misconduct warranted a lesser sanction?

PARTIES TO THE PROCEEDING

The Petitioner is Leonard W. Krouner, an attorney who was the subject of an order of the District of Columbia Court of Appeals entered on March 20, 2000 in a reciprocal attorney disciplinary proceeding. Respondent is the District of Columbia Court of Appeals.

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JURISDICTIONAL STATEMENT

The District of Columbia Court of Appeals order denying the petition for hearing en banc was filed on June 21, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and (b), as this Petition is brought to review a final decision of the District of Columbia Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Constitution, Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment 14

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1738

The records and judicial proceedings of any court of any such State, Territory or Possession, . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

District of Columbia Bar Rules XI § 10(c), (d) – for text, see Appendix J, pages J-1, J-2; and § 11(c)(3), (4), (f)(2) – for text, see Appendix J, pages J-2, J-3.

STATEMENT OF THE CASE

On March 30, 2000, the District of Columbia Court of Appeals entered an order suspending Petitioner's license to practice law for 30 days in a reciprocal discipline matter brought under D.C. Bar Rule XI(c). [*Appendix B*]. The Court of Appeals denied Petitioner's Petition for rehearing *en banc* on June 21, 2000. [*Appendix A*]

The conduct for which the thirty day suspension was imposed by the D.C. Court of Appeals had been the basis for previous disciplinary action by the Supreme Court of Florida, which issued an admonishment in a Report of Minor Misconduct dated April 28, 1997. See *Appendix D*. The New York Supreme Court Appellate Division , Third Department had also issued a censure for this conduct, in a memorandum and order dated and entered on June 22, 1995. See *Appendix F*.

In its ruling, the New York court found that Petitioner's misconduct arose from misbilling of phone calls to make a point in pending civil litigation, and that Petitioner did not intend to steal money from Toyota. Moreover, before disciplinary proceedings were instituted, Petitioner had already made restitution to Toyota Motor Co. for the calls. *Id.*

The District of Columbia Court of Appeals took no evidence and made no findings regarding Petitioner's unlawful intent in the Toyota matter; yet that court still found Petitioner that committed a serious crime in New York supporting license suspension in the District of Columbia without affording Petitioner notice or opportunity to be heard on that issue.

Petitioner practices law in New York where he has maintained active bar membership since his admission in 1973. Petitioner is an active member of the Florida Bar, but has never practiced law in that jurisdiction. Petitioner has maintained inactive status in the District of Columbia Bar since his admission there in 1974 – 26 years ago – and has never practiced law in that jurisdiction.

The events giving rise to the Petitioner's license suspension by the D.C. Court of Appeals on March 30, 2000 took place in New York in 1986 – 14 years ago, and in 1994 – 6 years ago. New York, Florida and District of Columbia all recognized that the 1986 and 1994 misconduct occurred while the Petitioner was under great stress in his personal life. Apart from the two isolated instances of misconduct in 27 years of bar admission Petitioner has had an unblemished professional record. [*Appendix F*, page 2].

The District of Columbia Court of Appeals March 30, 2000 order suspending Petitioner's license to practice for 30 days is a more severe sanction than the non-license impairing admonishment issued by the Supreme Court of Florida Second Judicial Circuit Grievance Committee on April 28, 1997 or the censure issued by the New York Supreme Court Appellate Division Third Department on June 22, 1995. The D.C. Court of Appeals 30 day suspension is a license impairing, reputation stigmatizing sanction which prevents Petitioner from earning a living and continues to be stigmatizing after the suspension period ends.

On June 25, 1998, the D.C. Court of Appeals filed an order holding that Petitioner's New York misdemeanor conviction did not constitute a "serious crime" requiring immediate suspension of Petitioner's license. *See* Appendix C. However, that order also referred the issue to the D.C. Board of Professional Responsibility, contrary to D.C. Bar Rule XI § 10(c).

The D.C. Bar Counsel filed a July 15, 1998 eight page statement with the D.C. Board of Professional Responsibility recommending reciprocal discipline consisting " . . . of a public censure by the court, based on the censure by the New York Court, and encompassing Petitioner's criminal conviction in New York." *See* Appendix H.

On March 5, 1999, the D.C. Board of Professional Responsibility issued a Report and Recommendation concluding that Petitioner had committed a serious crime in New York warranting suspension of Petitioner's D.C. Bar

license. This Report was issued without notice to Petitioner that the serious crime question was being reconsidered by the D.C. Board of Professional Responsibility, and without a hearing at which Petitioner could introduce evidence. *See* Appendix B and Appendix C. This Report and Recommendation ignored evidence of preinvestigation restitution by Petitioner to the victim of the misdemeanor, which had been relied upon by New York and Florida disciplinary bodies to issue sanctions upon the Petitioner for the same misconduct which did not impair his license. *See* Appendix D, Appendix F.

Neither the D.C. Board of Professional Responsibility nor the D.C. Court of Appeals conducted a hearing on whether the Petitioner committed a serious crime in New York. Nevertheless, the D.C. Court of Appeals found in its March 30, 2000 Order that Petitioner had committed a serious crime. *See* Appendix B at 11.

REASONS FOR GRANTING THE WRIT

I. THIS COURT HAS NEVER RULED UPON THE REQUIREMENTS OF THE FULL FAITH AND CREDIT IN RECIPROCAL ATTORNEY DISCIPLINE MATTERS

The D.C. Court of Appeals March 30, 2000 order creates a permanent stain on Petitioner's personal and professional reputation which is not supported by evidence before that Court. Petitioner and others similarly situated have no recourse when a court ignores the rulings of sister states more directly involved in the matter, and imposes more severe discipline without considering

the rulings of those states. See the discussion in Wolfram, *Modern Legal Ethics* (West Publishing Co. 1986) pp. 115-117, 126-130.

The District of Columbia Court of Appeals rejected Petitioner's contentions that the Full Faith and Credit Clause and 28 U.S.C. § 1738 required that Court to respect the rulings and findings entered by its sister state courts. Instead, the D.C. Court of Appeals found that its Rules XI § 11(c)(4) and § 11(f)(2) " . . . obligated [it] first to honor the policies of this jurisdiction." Appendix B, page 13.

As a result, the D.C. Court of Appeals ignored the United States Constitution, Article IV, Section 1 requirement that "Full Faith and Credit *shall* be given in each state to the public Acts, Records, and judicial Proceedings of every other state." [emphasis added.]

Ignoring these constitutional principles, the D.C. Court of Appeals relied upon its own decision, *In Re: Reid*, 540 A.2d 754 (D.C. 1988) as its authority not to recognize the final New York and Florida orders in this case. *See* Appendix B, page 13.

Whether the District of Columbia can create an exception to the United States Constitution Article IV § 1's Full Faith and Credit Clause for reciprocal attorney discipline proceedings by relying upon conflicting District of Columbia Bar Rules and a District of Columbia Court of Appeals decision immediately and certainly creates a United States Constitution unsettled issue which is appropriate for resolution by this Court. Hence, the D.C. Court of Appeals has "decided an important question of federal law which has not been, but should be, settled by this Court." *See* S. Ct. Rule 10(c).

The validity of exceptions to application of the Full Faith and Credit Clause in reciprocal attorney disciplinary matters created by a state bar rules impacts or can impact the attorney disciplinary process in each of the 50 states and the District of Columbia. Every practicing attorney with multiple state licenses has a personal and professional interest in knowing whether and to what extent a final disciplinary judgment in one state is entitled to Full Faith and Credit recognition in another state.

II. THE DUE PROCESS RIGHTS OF ATTORNEYS CHARGED IN RECIPROCAL DISCIPLINARY PROCEEDINGS PRESENT IMPORTANT AND NOVEL CONSTITUTIONAL QUESTIONS

This Court has recognized that res judicata and collateral estoppel are related doctrines deserving of recognition in the federal courts. *See Allen v. McCurry*, 449 U.S. 90, 92-104 (1980). Here, the D.C. Court of Appeals refused to even consider the res judicata effect of its prior order in this reciprocal attorney disciplinary proceeding, and went on to impose a severe sanction without affording Petitioner notice or an opportunity to present evidence on the issue it chose to reconsider. The D.C. Court of Appeals' ruling conflicts with this Court's holdings in *Allen v. McCurry*, 449 U.S. 90, 92-104 (1980), *Arizona v. California*, 460 U.S. 605 at 619 (1982), and *Montana v. United States*, 440 U.S. 147, 153-154 (1979).

The D.C. Court of Appeals chose to expand its jurisdiction, to increase the severity of disciplinary sanctions imposed upon the Petitioner by final New York and Florida judgments, despite having already resolved the crucial factual issue in Petitioner's favor. This action, as well

as the D.C. Court's referral of the serious crime issue to the D.C. Board of Professional Responsibility despite having already ruled on the issue, in the same order filed on June 25, 1998 appears to violate D.C. Bar Rule XI § 11(c), (f)(2), and § 10(d) as well as the Due Process Clause. *See* D.C. Bar Rule XI § 10(d) (imposing mandatory requirement that matter be referred to D.C. Bar Counsel upon determination that no serious crime was committed warranting immediate license suspension).

Certiorari should be granted to determine whether a court violates the Due Process Clause by first ruling that no license suspending serious crime was committed, and subsequently ruling inconsistently that a license impairing serious crime had been committed in another jurisdiction, in the face of a contrary ruling by the highest court in that jurisdiction.

Similarly, important Due Process issues of first impression are raised by the D.C. Court of Appeals' refusal to respect or even consider the decisions by the courts of New York and Florida, which found that Petitioner's pre-investigation restitution was significant, warranting lesser discipline. These issues cannot be resolved by any other Court. By imposing a license suspension which had already been rejected upon facts previously considered by New York, Florida, and once before by the District of Columbia Court of Appeals itself, the D.C. Court of Appeals imposed a permanent impairment upon Petitioner's reputation. The D.C. Court of Appeals' action raises the spectre of similar unbridled sanctions imposed by courts upon non-resident, non-practicing attorneys with but slight contact with the attorney subject to the disciplinary order.

The D.C. Court of Appeals' order raises important issues regarding the Due Process rights of attorneys in disciplinary proceedings. *See In Re: Ruffalo*, 390 U.S. 544, 549 (1968); *Matter of Selling v. Radford*, 243 U.S. 46, 50 (1917) (attorneys have rights to determinations of misconduct based upon evidence, and to notice of and opportunity to introduce evidence on charges against them); *see also Allen v. McCurry*, 449 U.S. 90, 92-104 (1980) (litigants, including petitioners in attorney disciplinary proceedings, have right to rely on res judicata and law of the case principles to avoid duplicate litigation and inconsistent rulings by the same court in the same case).

State attorney disciplinary proceedings are essential to protect the public from unethical and incompetent lawyers. Public confidence in the attorney disciplinary process depends upon the conduct of disciplinary proceedings within the boundaries of due process guaranteed by the Constitution. This case provides an opportunity for this Court to address novel legal issues of national importance to the public, to attorneys, and to the state courts, attorneys, and personnel involved in the attorney disciplinary process.

CONCLUSION

For the reasons stated above, this petition is well taken and should be granted.

Dated: September, 2000

Respectfully submitted,

LEONARD W. KROUNER
Petitioner

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APPENDIX D	***The Florida Bar v. Leonard W. Krouner,*** Unpublished Report of Minor Misconduct, Supreme Court of Florida Second Judicial Circuit Grievance Committee, Dated April 28, 1997.
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District of Columbia
Court of Appeals

No. 98-BG-446

IN RE: LEONARD W. KROUNER,

Respondent.

BDN: 448-97

BEFORE: Wagner, Chief Judge; Terry, Steadman, Schwelb, Farrell, Ruiz, Reid, Glickman, and Washington, Associate Judges.

ORDER

(Filed Jun. 21, 2000)

On consideration of respondent's petition for rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED that the petition for rehearing en banc is denied.

PER CURIAM.

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 98-BG-446

IN RE: LEONARD W. KROUNER,
RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals

On Report and Recommendation of the
Board on Professional Responsibility

(Submitted January 19, 2000 Decided March 30, 2000)

Leonard W. Krouner, respondent, filed a brief pro se.

Leonard H. Becker, Bar Counsel at the time the brief was filed, and *Michael S. Frisch*, Senior Assistant Bar Counsel, were on the brief for the Office of Bar Counsel.

Elizabeth J. Branda, Executive Attorney, was on the brief for the Board on Professional Responsibility.

Before WAGNER, *Chief Judge*, and TERRY and FARRELL, *Associate Judges*.

WAGNER, *Chief Judge*: This reciprocal discipline matter is before the court on the recommendation of the Board on Professional Responsibility (Board) that Leonard W. Krouner be suspended from the practice of law in the District of Columbia for a period of thirty days. Krouner was censured in a disciplinary proceeding in the State of New York based upon his criminal conviction in that state for theft of services, in violation of New York Penal Law § 165.15 (4), a class A misdemeanor, and upon findings that he violated Disciplinary Rules 1-1029 (A)(4), (5) and (8) of the New York Code of Professional Responsibility. The Board recommends that we depart from the imposition of identical reciprocal discipline under Bar Rule XI, § 11 (c)(4) of our local rules. Krouner objects to

the imposition of substantially different discipline. He contends that: (1) his misconduct does not warrant sanctions greater than those imposed by the States of New York and Florida;[1] (2) the Board failed to consider mitigating circumstances; and (3) "the 'substantially different discipline' exception to the imposition of identical reciprocal discipline in D.C. Bar Rule XI, § 11 (c)(4) and (f)(2) violates the United States Constitution, Article IV § 1, 28 U.S.C. § 1728 and the reciprocity principles for recognition of disciplinary judgments between states." For the reasons stated in this opinion, we adopt the Board's recommendation.

I.

Factual and Procedural Background

Krouner was disciplined in the State of New York based on three unrelated matters. On July 25, 1991, he was convicted on charges of theft of services. The conviction arose out of Krouner's billing, without authorization, more than $900 in long distance telephone calls to the telephone of Toyota Motor Sales, USA, Inc., (Toyota) between August and September 1986. In June 1987, Toyota demanded reimbursement, and Krouner complied by the end of September 1987. In explanation of his actions, Krouner claimed that "at the time of these unauthorized billings he was a plaintiff in a Federal court class action lawsuit against Toyota and merely wanted to demonstrate Toyota's capacity to account for small financial transactions." In mitigation, he stated that he was "beset by very stressful personal problems during the relevant time period . . . and that he has made positive and significant voluntary contributions to his community and his profession." He also provided a number of affidavits attesting to his good character.

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[1] Based on the New York disciplinary findings, Krouner was issued an admonishment in Florida and required to pay administrative costs of $750.

Krouner's violations of New York's disciplinary rules arose out of his signing the names of two of his clients, who were co-executors of an estate, to a petition to extend preliminary letters testamentary on their behalf. Krouner had the document notarized and submitted it to the Albany County Surrogate Court. While admitting the violations, Krouner claimed in mitigation that "he was acting in good faith to ensure uninterrupted administration of the estate, the primary asset of which was a nursing home, and that he believed he had the co-executors' permission to sign their names to the petition." When he discovered that he had acted without the authorization of his clients, "he took prompt action to have the petition declared null and void, settle[d] some disputes among three co-executors, waive[d] his right to any fees for his work on the estate, and cease[d] his further provision of legal services for the estate."

In considering the charges of misconduct and the evidence offered in mitigation thereof, the New York court found that "[i]t is clear that respondent acted unethically in signing the co-executors' names to the petition without their unambiguous authorization and that he acted inexcusably in notarizing the signatures and then submitting the fraudulent documents to the Surrogate." The court also found that Krouner's failure to file with the court a record of his 1991 criminal conviction violated New York's rules of professional conduct.[2] Based upon the three charges, the New York Court imposed the sanction of public censure.

Bar Counsel recommended to the Board identical discipline. In rejecting Bar Counsel's recommendation, the Board stated:

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[2] The Board noted that it was unaware of any case in the District where failure to report a criminal conviction under Rule XI, §§ 10 & 11 was found to constitute professional misconduct.

> This recommendation . . . only considered reciprocal sanctions imposed pursuant to Rule XI, § 11 (c), where there is a presumption of identical discipline. Bar Counsel did not address the issue of the appropriate sanction under Rule XI, § 10 (d), where the sanction imposed is the result of a conviction of a serious crime. Moreover, in recommending identical reciprocal discipline, Bar Counsel did not acknowledge that there were several practice-related dishonesty violations occurring eight years apart or that [Krouner] was found to have engaged in conduct prejudicial to the administration of justice which adversely reflected on his fitness to practice law.

The Board recommended to this court a thirty-day suspension. The Board's recommended sanction was based on two separate provisions of Rule XI, specifically, § 10 (d) providing for discipline upon convictions of a serious crime, and § 11 providing for reciprocal discipline. The Board determined that the minimum sanction for a misdemeanor conviction involving dishonest conduct is a thirty-day suspension. Further, the Board concluded that a thirty-day suspension "is at the lower end of the range of sanctions where there are two or more separate acts of dishonesty." In determining whether to apply the "substantially different discipline" exception of Rule XI, § 11 (c)(4), the Board determined that "if this matter were before us on these facts as an original jurisdiction case, the very minimum recommendation would be a suspension of 30 days." The Board further concluded that the difference in the New York sanction of public censure and the original jurisdiction sanction of suspension "is substantial" and "that a public censure is outside the

range of sanctions for [Krouner's] misconduct for purpose of reciprocal discipline."

II.

Analysis

Krouner objects to the Board's recommendation, essentially arguing that imposition of the Board's sanction would result in grave injustice. *See* Rule XI, § 11 (c)(3). Specifically, Krouner argues that the Board erred in concluding that his conviction for a theft crime is by definition a "serious crime" under Rule XI, § 10 (d) and that the Board did not weigh the facts "indicating that [he] did not intend to avoid payment for the telephone calls or to benefit personally from signing and notarizing his clients' names." Krouner further argues that the cases relied upon by the Board in determining the severity of the sanction are distinguishable. Krouner also contends that his conduct does not warrant "substantially different" discipline.

District of Columbia Bar Rule XI, § 11 (c) "creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction."[3] *In re Zilberberg*, 612 A.2d 832,

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[3] D.C. Bar Rule XI, § 11 (c) provides that:

> Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:
>
> (1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or

(continued...)

834 (D.C. 1992) (citing *In re Velasquez*, 507 A.2d 145, 146-47 (D.C. 1986) (per curiam)). The court may impose different discipline where "'the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence,' that one or more of the specifically enumerated exceptions set forth in § 11 (c) exists." *In re Garner*, 576 A.2d 1356, 1357 (D.C. 1990) (citing D.C. Bar R. XI, § 11 (f)).[4] Where a greater sanction

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[3](...continued)

> (3) The imposition of the same discipline the Court would result in grave injustice; or
>
> (4) The misconduct established warrants substantially different discipline in the District of Columbia; or
>
> (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

[4] D.C. Bar R. XI, § 11 (f) provides as follows:

> Action by the Court. (1) When no opposition to the recommendation of the Board has been timely filed, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing an opposition.
>
> (2) In matters not falling under paragraph (1) of this subsection, the Court shall impose the identical discipline unless the attorney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection ([c]) of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board

(continued...)

is sought, "the record must affirmatively show that the greater sanction is warranted." *Zilberberg*, 612 A.2d at 835 (citing *In re Reid*, 540 A.2d 754 (D.C. 1988), and *In re Larsen*, 589 A.2d 400 (D.C. 1991)).

Here, the Board's recommendation for the imposition of a greater sanction is based on the "substantially different discipline" exception set forth in § 11 (c)(4) of Rule XI. Where that exception forms the basis for the recommendation, we undertake a two-step inquiry which includes: (1) whether the "misconduct in question would not have resulted in the same punishment here as it did in the disciplining jurisdiction," and (2) where discipline in this jurisdiction would be different, "whether the difference is substantial." *Garner, supra*, 576 A.2d at 1357 (citations omitted). In considering the first step in this inquiry, "the question is whether the discipline of the foreign jurisdiction is within the range of sanctions that would be imposed for the same misconduct." *Id.* (citing *In re Hirschberg*, 565 A.2d 610, 614 (D.C. 1989); *In re Reiner*, 561 A.2d 479, 482 (D.C. 1989)). We find no error in the Board's conclusion that it is not.

A. *Sanction Under Rule XI, § 10*

Krouner was convicted of theft of services based on his placing over $900 in unauthorized long distance calls to the account of Toyota. Such conduct is subject to sanction in this jurisdiction under Rule 8.4 (c) of the Rules of Professional Conduct, which states that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Cases in this jurisdiction support the imposition of a thirty-day suspension for a misdemeanor conviction for a crime involving dishonesty as the minimum sanction, as the Board concluded. In *In re Rushfield*, 721 A.2d 167 (D.C.

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[4](...continued)
for its further consideration and recommendation.

1998), for example, a thirty-day suspension was imposed where the respondent was convicted of three misdemeanors relating to ERISA reporting requirements, in violation of 29 U.S.C. § 1131. *Rushfield* was a reciprocal discipline case in which the Board concluded that substantially different discipline from that imposed in New Jersey (reprimand) and New York (public censure) was warranted. In *In re Kent*, 467 A.2d 982 (D.C. 1983), a thirty-day suspension was imposed where the attorney was convicted of taking property without right even though the criminal conduct was found to be related to psychological problems and not an intent to steal. Thus, it appears that if Krouner had been convicted of a crime involving dishonesty in the District, the minimum sanction would have been a thirty-day suspension.[5]

Krouner seeks to distinguish his misconduct from that involved in these cases, arguing that, in spite of the conviction, he lacked an intent to steal. However, other cases in this jurisdiction resulted in a thirty-day suspension for similar misconduct where there were similar mitigating factors. For example, in *Kent, supra*, the respondent was suspended for thirty days for violating Disciplinary Rule 1-102 (A)(4) (engaging in conduct involving dishonesty, deceit, fraud and misrepresentation). 467 A.2d at 983. The attorney in *Kent*, who previously had an unblemished professional record, had a history of personal and emotional problems

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[5] There have been cases in which this court has imposed longer periods of suspension upon conviction for similar crimes involving dishonesty. *See In re Phillips*, 705 A.2d 690 (D.C. 1998) (sixty-day suspension for filing a false and misleading sworn petition in federal court which resulted in a criminal contempt conviction); *see also In re Cerroni*, 683 A.2d 150 (D.C. 1996) (one-year suspension for knowingly making and submitting a false statement and report to HUD and FHA resulting in a criminal conviction); *In re McBride*, 642 A.2d 1270 (D.C. 1994) (one-year suspension for aiding and abetting passport fraud and signing a false statement resulting in a criminal conviction).

which required psychiatric treatment. After she discontinued treatment, she went into a department store and openly stuffed merchandise in her briefcase and purse. She ultimately pleaded guilty to a misdemeanor charge of taking property without right for this offense. This court found that the record supported the Board's finding that the misconduct involved dishonesty within the meaning of the disciplinary rule, but not moral turpitude, given the unusual circumstances which indicated "that respondent's actions were prompted by a neurotic desire to be caught rather a desire for personal profit." 467 A.2d at 984. This court imposed a thirty-day suspension for this single instance of misconduct, unrelated to the practice of law, given the nature of the behavior.[6] Moreover, in Krouner's case, the New York court did not find specifically that he lacked an intent to steal nor that he intended to repay Toyota as he argues.

Relying on *In re Abrams*, 689 A.2d 6 (D.C.) (en banc), *cert. denied*, 521 U.S. 1121 (1997), Krouner argues that censure is within the range of sanctions available for conduct involving dishonesty resulting in criminal conviction. This argument is unpersuasive. In *Abrams*, the respondent was pardoned by the President for giving false but unsworn testimony to Congress which resulted in a guilty plea to criminal charges. The en banc court censured respondent because there was no other sanction which could command a majority.[7] In imposing censure,

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[6] *Cf. In re Schneider*, 553 A.2d 206 (D.C. 1989) (thirty-day suspension for knowing and conscious decision to physically alter receipts and to submit the false claims for payment in the absence of finding of an intent to deceive and criminal conviction).

[7] Three judges were of the opinion that Abrams should be suspended for six months. One judge would have adopted the Board's recommendation of a one-year suspension. Four judges were of the opinion that the presidential pardon precluded the imposition of any sanction. *Abrams*, *supra*, 689 A.2d at 19.

the court explained that

> [u]nder the unusual circumstances here presented, and solely in order to enable the court to dispose of the case, the four judges who believe that Abrams should be suspended from practice have agreed that the sanction [of public censure as] proposed by Judge King should be imposed.

Id. at 19. Therefore, it cannot be fairly said that *Abrams* supports censure as a sanction for criminal convictions based on conduct involving dishonesty.

B. *Sanctions Under Rule XI, § 11*

In the District, the sanctions for disciplinary violations involving misrepresentation or the filing of false notarizations with the court, absent criminal conviction, range from informal admonition to suspension. *See In re Confidential (JEK)*, D.N. 235-78 (BPR Nov. 29, 1979) (informal admonition for submission of an affidavit with a false notarization to the court); *In re Sudderth*, D.N. 329-97 (BPR July 23, 1998) (reprimand for the execution of a false jurat). In *In re Reback*, 513 A.2d 226 (D.C. 1986) (en banc), two attorneys were suspended for six months for filing a divorce complaint knowing that the client's signature had been forged. The attorneys caused the second complaint to be filed without the client's knowledge after the first had been dismissed pursuant to Super. Ct. Dom. Rel. R. 41 (d) (case not at issue within six months after its filing date shall be dismissed after notice to the attorneys). This court has imposed suspensions in both original jurisdiction matters and reciprocal discipline cases involving misrepresentation and forgery. *See, e.g., In re Rosen*, 481 A.2d 451 (D.C. 1984) (thirty-day suspension for misrepresentation on three separate occasions in pleadings filed with the court); *see also In re Garner*, 611 A.2d 969 (D.C. 1992) (six-month suspension as reciprocal discipline for supplying and notarizing alias

names of adoptive parents in an adoption matter).

Krouner argues that his actions in filing the falsified complaint are distinguishable from those of the attorneys in *Phillips*, *Reback*, and *Rosen*. He contends that he acted in good faith in signing and falsely notarizing the signatures of his clients to a document and submitting the document to the court. However, the New York court did not make a finding that Krouner acted in good faith. While acknowledging respondent's good faith argument, the New York court stated that "[i]t is clear that respondent acted unethically in signing the co-executors names to the petition without their unambiguous authorization and that he acted inexcusably in notarizing the signatures and then submitting the fraudulent document to the Surrogate." Under the circumstances, the Board could conclude fairly that the sanction in New York was outside the range of comparable sanctions for similar misconduct.

In summary, in this jurisdiction the minimum discipline for a conviction of a serious crime (including one marked by dishonesty) is a thirty-day suspension. A thirty-day suspension for unauthorized signing of clients' names to a document, then submitting that document to the court, is at the low end of the range of sanctions. Citing *In re Goffe*, 641 A.2d 458 (D.C. 1994), Krouner argues that this court has rejected the proposition that case precedents establish minimum and maximum sanctions for future cases. He contends that appropriate discipline should be determined based upon: (1) the nature of the violation; (2) mitigating and aggravating circumstances; (3) the need to protect the public; and (4) the moral fitness of the attorney. *See id.* at 464 (citations omitted). In rejecting the Board's recommended sanction of a one-year suspension and imposing the sanction of disbarment in *Goffe*, this court indeed stated that the prior cases relied upon were not intended to establish a ceiling for sanction of an attorney who had engaged in dishonest conduct. However, we adhered to the principle that "decisions of

this court can serve as overall guidelines to assist in defining the permissible range of sanctions." *Id.* at 464. In *Goffe*, we noted that the absence of a case which had previously imposed discipline greater than one year simply evidenced that the cases provided no prior example of attorney dishonesty of the magnitude which occurred in *Goffe*. *Id.* Thus, applying the factors cited by Krouner here, the court in *Goffe* rejected the Board's recommendation for a lesser sanction based upon the particular circumstances of the case. *Id.* In Krouner's case, the Board properly applied prior decisions in determining the permissible range of sanctions for the misconduct involved.[8]

C. *The "Substantially Different Discipline" Exception*

Krouner argues that his misconduct does not warrant different discipline than that imposed by New York. Under D.C. Bar Rule XI, § 11 (f)(2), reciprocal discipline will be imposed "'unless the attorney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence' that one or more of the specifically enumerated exceptions set forth in § 11 (c) exists." *Garner, supra*, 576 A.2d at 1357 (quoting D.C. Bar Rule XI, § 11 (f)(2)). In this case, the Board recommends application of the exception in D.C. Bar Rule XI, § 11 (c)(4), which provides for a different sanction where the misconduct warrants substantially different discipline in the District of Columbia. In determining whether the exception applies, we determine first whether the misconduct would have resulted in the same punishment in the District as it did in New York. *Garner*, 576 A.2d at 1356 (citation omitted). A survey of our cases shows that a thirty-day suspension for two instances of dishonesty, one of which resulted in

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[8] We are not persuaded that the Board failed to apply properly the relevant factors for determining the sanction that would be imposed for similar misconduct in the District of Columbia.

criminal conviction, is the minimum sanction which would be imposed in the District. Having determined that the sanction for the misconduct under consideration would have been different, the next step is whether the difference in sanction is substantial. *See id.* We agree with the Board that the difference between a suspension, which this jurisdiction would impose, and a public censure, which New York imposed, is substantial. As Krouner points out, suspension is license-impairing, while censure is not. Since the discipline that would have been imposed here is substantially different, the exception in Rule XI, § 11 (c)(4) is applicable.

Krouner argues that the Board failed to consider mitigation evidence in making its recommendation. A review of the record shows otherwise. The Board recognized Krouner's claim that he lacked the intent to steal and that he was under family stress at the time. With regard to the submission of falsely notarized signatures, the Board noted Krouner's statement that "he took prompt action to have the petition declared null and void, settled certain disputes involving the co-executors and waived his right to any fees for his work on the estate."

Finally, relying on "full faith and credit" principles, Krouner argues that Bar Rule XI, § 11 (c)(4) and § 11 (f)(2) should be declared unconstitutional as enacted and applied. We rejected a similar argument in *Reid, supra*, 540 A.2d 754. There we stated that

> [a]lthough we are mindful of the fact that "there is merit in the idea of granting due deference -- for its sake alone -- to the opinions and actions of a sister jurisdiction with respect to attorneys over whom we share supervisory authority," *Velasquez*, [*supra*], 507 A.2d [at] 147, we are obligated first to honor the policies of this jurisdiction.

Reid, 540 A.2d at 759 n.6. Nothing in the Constitution requires blind conformity between the standards for attorney discipline adopted by different jurisdictions. Accordingly, it is hereby

ORDERED that respondent, Leonard W. Krouner, be, and hereby is suspended from the practice of law for thirty days, effective thirty days from the entry of this opinion. Respondent's attention is directed to the requirements of D.C. Bar Rule XI, § 14 relating to suspended attorneys.

So ordered.

A true Copy
Test:

Garland Pinkston, Jr.
Clerk of the District of Columbia Court of Appeals

BY _____
DEPUTY CLERK

BEST AVAILABLE COPY

District of Columbia
Court of Appeals

No. 98-BG-446

In the matter of
LEONARD W. KROUNER, ESQUIRE,
A Member of the Bar of the
District of Columbia
Court of Appeals,

Respondent. BDN:448-97

BEFORE: Terry and King, Associate Judges, and Belson, Senior Judge.

ORDER

(Filed Jun. 25, 1998)

On consideration of the certified copy of the judgment of conviction entered in New York, Bar Counsel's proposed order for interim suspension, the motion of respondent for an extension of time, consolidation, and permission to proceed by submission, the motion of respondent for a protective order sealing documentary attachments, respondent's lodged opposition to Bar Counsel's request for interim suspension, Bar Counsel's reply thereto, the motion of respondent for leave to file a response to Bar Counsel's reply, the lodged response, and the lodged corrected response, it is

ORDERED that the motion of respondent for an extension of time to file opposition is granted, and the Clerk shall file the lodged opposition. It is

FURTHER ORDERED that the motion of respondent for leave to file a response is granted, and the Clerk shall file the lodged response and corrected response. It is

FURTHER ORDERED that the motion of respondent for consolidation is denied. It is

FURTHER ORDERED that the motion of respondent to proceed by submission in this court is granted. It is

FURTHER ORDERED that the motion of respondent to proceed by submission before the Board on Professional Responsibility is denied without prejudice to renewal before the Board on Professional Responsibility. It is

FURTHER ORDERED that the motion of respondent for a protective order placing his documentary attachments under seal is held in abeyance pending further order of this court. It is

FURTHER ORDERED that respondent shall, within twenty days from the date of this order, specify which documents in the documentary attachment warrant protection from disclosure. It is

FURTHER ORDERED that the request of Bar Counsel for a temporary suspension is denied. *See In re: Velasquez*, 507 A.2d 145, 147 (D.C. 1986). It is

FURTHER ORDERED that the Board on Professional Responsibility shall institute a formal proceeding pursuant to D.C. Bar R. XI, § 10 (d), to determine the nature of the final discipline to be imposed. It is

FURTHER ORDERED that the Board on Professional Responsibility shall consider reciprocal discipline pursuant to D.C. Bar R. XI, § 11, based on the order of censure.

PER CURIAM

Copies to:

Karen K. Christensen, Esquire
Chair, Board on Professional Responsibility
515 Fifth Street, N.W.
Building A, Room 101
Washington, D.C. 20001

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel
515 Fifth Street, N.W.
Building A, Room 127
Washington, D.C. 20001

Leonard W. Krouner, Esquire
2 Greyledge Drive
Albany, NY 12211-2054

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

vs. TFB File No. 97-00623-02

LEONARD W. KROUNER,

Respondent.
_____/

REPORT OF MINOR MISCONDUCT

I. Committee Recommendation: Pursuant to Rule 3-7.4(m), the committee recommends that Respondent receive an admonishment. Administration of the admonishment shall be by service of a copy of this Report upon Respondent.

II. Recitation of Facts and/or Comment on Mitigating, Aggravating or Evidentiary Matters: Respondent was censured in New York on June 22, 1995 for: a) signing client's names to a document in a probate matter without their consent in 1994; b) notarizing those signatures and submitting such false evidence to a court; and c) plea of guilty on July 25, 1991 to a misdemeanor for theft of $964 worth of services. Respondent took corrective steps to cure the probate matter and withdrew from the representation. Respondent made restitution for his criminal acts. Respondent's representation did not involve bad faith acts, and Respondent was experiencing personal and family problems at the time of his misconduct.

III. Admonishment: Leonard W. Krouner, your actions have discredited the legal profession of the State of Florida. Such conduct cannot be tolerated by your fellow lawyers and should not be tolerated by you. Pride in your profession demands that you not violate the Rules of Professional Conduct again. If you do, your present misconduct will be considered in future disciplinary proceedings.

IV. Costs: The cost of these proceedings is assessed against Respondent as follows:

Administrative Costs	$750.00
TOTAL	$750.00

V. Committee Vote:

A quorum of not less than three members of the committee being present, two of whom were lawyers, the committee by affirmative vote of a majority of the committee present voted in favor of the committee recommendation stated in item I above. This vote does not include the vote of the lawyer investigating member, who by rule is not allowed to vote. In accordance with Rule 3-7.4(f), the committee reports the number of committee members voting for, or against, this report as follows:

In favor of the report 9

Against the report 0

Dated this 28th day of April, 1997.

BY: /s/ George H. Gwynn
George H. Gwynn
Second Judicial Circuit
Grievance Committee

I HEREBY CERTIFY that the original of the foregoing Report of Minor Misconduct regarding TFB File No. 97-00623-02, was sent to Bar Counsel by regular U.S. Mail, this 28th day of April, 1997.

/s/ George H. Gwynn
George H. Gwynn, Chair

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN THE MATTER OF
LEONARD KROUNER

Respondent.

(Filed Jul. 6, 1995)

THOMAS J. McAVOY, C.J.

Pursuant to Rule 83.4 of the General Rules of the Northern District of New York, upon reading and filing a certified copy of an Order of the Appellate Division of the Supreme Court, Third Judicial Department, duly entered on June 22, 1995, censuring respondent and it further appearing that Leonard Krouner was admitted to practice before this Court on February 20, 1993.

ORDERED that pursuant to Rule 83.4 (d) of the General Rules of the Northern District of New York that Leonard Gourley [sic] is hereby censured;

ORDERED that the Clerk of this Court shall send a certified copy of this Order by certified mail to the respondent at his last known address.

DATED THIS 30th DAY OF JULY, 1995.

/s/ Thomas J. McAvoy
THOMAS J. McAVOY
Chief, U.S. District Judge

Supreme Court – Appellate Division
Third Judicial Department

Decided and Entered: June 22, 1995

In the Matter of LEONARD KROUNER, an Attorney and Counselor-at-Law.

MEMORANDUM AND ORDER

COMMITTEE ON PROFESSIONAL STANDARDS, THIRD JUDICIAL DEPARTMENT,

Petitioner;

LEONARD KROUNER,

Respondent.

Calendar Date: May 31, 1995

Before: Mikoll, J.P., Crew III, Yesawich Jr. and Spain, JJ.

Mark S. Ochs, Committee on Professional Standards (Michael J. Philip Jr. of counsel), Albany, for petitioner.

Susan Brotman, New York City (E. Stewart Jones of counsel, Troy), for respondent.

Per Curiam.

Respondent was admitted to practice by this Court in 1973 and maintains an office for the practice of law in Albany.

By petition dated January 3, 1995, petitioner Committee on Professional Standards accused respondent of violating the Code of Professional Responsibility, DR 1-102 (A) (4), (5), and (8), by improperly signing the names of two of his clients, who were co-executors of an estate, to a February 1994 petition to extend preliminary letters testamentary on their behalf and then notarizing the signatures (charge I) and of violating DR 1-102 (A) (5) and (8) by submitting the petition with the improper notarization to the Albany County Surrogate's Court (charge II). Respondent admits the charges and specifications; his submission in mitigation states that he was acting in good faith to ensure uninterrupted administration of the estate, the primary asset of which was a nursing home, and that he believed he had the co-executors' permission to sign their names to the petition. When respondent discovered that he had acted without the co-executors' authorization he took prompt action to have the petition declared null and void, settle some disputes among the three co-executors, waive his right to any fees for his work on the estate, and cease his further provision of legal services for the estate. It is clear that respondent acted unethically in signing the co-executors' names to the petition without their unambiguous authorization and that he acted inexcusably in notarizing the signatures and then submitting the fraudulent document to the Surrogate.

In a separate matter, petitioner moved on February 10, 1995, to suspend respondent from the practice of law pursuant to Judiciary Law § 90 (4) (f) by reason of his conviction of a serious crime. It appears respondent was convicted on July 25, 1991 of theft of services in violation of Penal Law § 165.15 (4), a class A misdemeanor. He was

sentenced in Albany City Court to conditional discharge, restitution, and a $125 fine. A motion by respondent to set aside the conviction was denied on February 7, 1995. The criminal prosecution was based on allegations that between August and September 1986, respondent charged more than $900 in long distance calls to a telephone number assigned to Toyota Motor Sales, USA Inc., without that company's authorization. Toyota demanded reimbursement in June 1987 and respondent complied by the end of September 1987. Respondent claims that at the time of these unauthorized billings he was a plaintiff in a Federal court class action lawsuit against Toyota and merely wanted to demonstrate Toyota's capacity to account for small financial transactions.

In mitigation of his misconduct, respondent states he was beset by very stressful personal problems during the relevant time period, especially when he was misbilling Toyota, and that he has made positive and significant voluntary contributions to his community and his profession. He also submits a number of very laudatory character affidavits from people who have been advised of the instant disciplinary proceeding.

As part of its motion, petitioner notes that respondent failed to comply with the requirement of the Judiciary Law whereby an attorney convicted of a crime must file the record thereof with the Appellate Division within 30 days after the conviction (*see*, Judiciary Law § 90 [4] [c]). Such a failure to file "shall be deemed professional misconduct provided, however, that he [sic] appellate division may upon application of the attorney, grant an extension upon good cause shown" (Judiciary Law § 90 [4] [c]).

We find respondent guilty of the professional misconduct charged and specified in the petition; further, we deny as moot petitioner's motion to suspend respondent pursuant to Judiciary Law § 90 (4) (f), and deny respondent's motion for an extension to file the record of his conviction. The conviction and failure to file the record thereof, along with the professional misconduct charged and specified in the petition, warrant the imposition of a disciplinary sanction against respondent (*see*, Judiciary Law § 90 [2], [4] [c] and [g]).

In view of all of the above, we conclude that, to deter similar misconduct and to preserve the reputation of the Bar respondent should be censured. (*See, e.g., Matter of Glavin*, 153 AD2d 982; *Matter of Grant*, 85 AD2d 102).

Mikoll, J.P., Crew III, Yesawich Jr., and Spain, JJ., concur.

ORDERED that respondent be and hereby is found guilty of the professional misconduct charged and specified in the petition; petitioner's motion to suspend respondent pursuant to Judiciary Law § 90 (4) (f) be and hereby is denied; and respondent's application to file a late certificate of conviction be and hereby is denied; and it is further

ORDERED that respondent be and hereby is censured.

ENTER:

Michael J. Novack
Clerk of the Court

LEONARD W.
KROUNER

ATTORNEY & COUNSELOR AT LAW

June 29, 2000

Garland Pinkston, Jr.
Clerk, D.C. Court of Appeals
500 Indiana Avenue, N.W.
Sixth Floor
Washington D.C. 20001

re: In re Krouner
No. 98-BG-446
Bar Docket No. 448-97

Dear Mr. Pinkston:

Enclosed for filing in the above captioned matter is my D.C. Bar Rule XI §14 affidavit and registration statement.

Please advise if there are any deficiencies in the statement and when my period of license suspension will be concluded.

Very truly yours,

/s/ Leonard W. Krouner
Leonard W. Krouner

LWK/slc
Enclosure
01-249-0

cc: Patricia A. Brannan, Esq.
Chair
Board on Professional Responsibility
515 5th Street N.W., Room 102
Washington D.C. 20001-2797

Joyce E. Peters, Esq.
Bar Counsel, Office of Bar Counsel
Board on Professional Responsibility
515 5th Street N.W., Room 127
Washington D.C. 20001-2797

DISTRICT OF COLUMBIA
COURT OF APPEALS

In the Matter of LEONARD W. KROUNER, Respondent A Member of the Bar of the District of Columbia Court of Appeals	INDEX NO. 98-BG-446 BON: 448-97

D.C. BAR RULE XI §14 AFFIDAVIT AND REGISTRATION STATEMENT

NEW YORK STATE)
ALBANY COUNTY) SS.:

Please take notice that the undersigned submits the following D.C. Bar Rule XI§14 affidavit and, registration statement to the D. C. Court of Appeals, and the D.C. Board of Professional Responsibility having received a copy of the D.C. Court of Appeals order filed on June 21, 2000 denying his petition for a rehearing en banc.

Rule XI §14 (a)-(f)

The undersigned is an inactive member of the D.C. Bar, has *no* clients on retainer, has no clients in any non-litigation matters, and was not representing anyone is any litigated matter in the District of Columbia as of the effective dates of the D.C. Ct. of Appeals decision/order dated 3/30/00 or the order filed on 6/21/00. For this reason the undersigned has no documents to submit under D.C. Bar Rule XI §14 (a)-(f).

Rule XI §14 (g)-(i)

See explanation for non-submission of documentation.

BAR AND COURT ADMISSIONS

New York, Florida, District of Columbia; United States Supreme Court; United States Courts of Appeal for the Second and Fifth Circuits; United States District Courts for the Northern, Southern, and Eastern Districts of New York; United States Tax Court; United States Court of Claims.

Rule, XI §14 (g)(3)

This affidavit was served on D.C. Bar counsel Joyce E. Peters by placing same in a prepaid U.S. Postal mail wrapper addressed to her at 515 Fifth Street, N.W., Room 127, Washington, D.C. 20001 and depositing same in a receptacle maintained by the U.S. Postal Office, at the Loudon Plaza Shopping Center, Albany, NY 12211 on 6/27/00.

Rule XI §14 (g)(3)

The undersigned attorney's address is 2 Greyledge Drive. Albany, NY 12211-2054.

/s/ Leonard W. Krouner
Leonard W. Krouner

On June 27, 2004 before me came Leonard W. Krouner who signed the above document

/s/ Sheri Camprone
Notary Public – State of New York Qualified in Rensselaer County 02-040-0

SHERI CAMPRONE
Notary Public,
State of New York
Qualified in
Rensselaer County
No. 4970392
Commission Expires
Aug. 13, 2000

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	
LEONARD W. KROUNER, ESQUIRE	**Bar Docket No. 448-97**
Respondent	

STATEMENT OF BAR COUNSEL

COMES NOW the Office of Bar Counsel, by Bar Counsel and the undersigned Senior Assistant Bar Counsel, pursuant to Board Rule 8.1. For reasons set forth more fully below, reciprocal discipline should be imposed in this matter.

I. BACKGROUND

Respondent is a member of the Bar of the District of Columbia Court of Appeals (the "Court"), having been admitted by motion on April 9, 1974. He also is admitted to practice in New York and Florida.

On July 25, 1991, Respondent was convicted in the Albany City Court, County of Albany, State of New York, of theft of services in violation of New York Penal Law, § 165.15(4), a Class A misdemeanor. He was sentenced to conditional discharge, restitution, and a $125 fine. *People v. Krouner*, Docket No. 91-36444. *See* Attachment A.

A disciplinary proceeding was initiated in New York based, in part, on Respondent's criminal conviction. On

June 22, 1995, the Supreme Court of the State of New York, Appellate Division, Third Judicial Department (the "New York Court"), censured Respondent. *See* Attachment B.

Respondent did not report the conviction or censure to the Court. Bar Counsel learned of the conviction and censure from the ABA National Lawyer Regulatory Data Bank. We obtained a certified copy of the judgment of conviction and order of censure, which we submitted to the Court pursuant to D.C. App. R. XI, §§ 10 & 11.

On June 25, 1998, the Court entered an order referring the censure to the Board on Professional Responsibility (the "Board") for consideration of reciprocal discipline. The Court declined Bar Counsel's request to suspend Respondent on an interim basis, apparently concluding that the misdemeanor offense did not involve a "serious crime" as defined by Rule XI, § 10(b).[1]

II. THE MISCONDUCT

The criminal conviction was based on an allegation that between August and September 1986, Respondent charged more than $900 in long-distance telephone calls to a telephone number assigned to Toyota Motor Sales, USA, Inc., without that company's authorization. Toyota

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[1] The Court's order is ambiguous in regard to the disposition of the criminal matter. While declining to suspend Respondent and not directing that a moral-turpitude inquiry be conducted (as Bar Counsel had requested), the Court referred the matter to the Board to institute a formal proceeding to determine the nature of the final discipline to be imposed pursuant to Rule XI, § 10(d).

demanded reimbursement in June 1987, and Respondent complied by September 1987. Respondent contended that the unauthorized billings were motivated by his attempt to demonstrate in litigation in which he was a plaintiff that Toyota had the capacity to account for small financial transactions.

In an unrelated matter, Respondent was charged with improperly signing and notarizing the signatures of two clients, co-executors of an estate, to a petition to extend preliminary letters testamentary on their behalf, and with submitting the petition to the Albany County Surrogate's Court. Respondent admitted the allegations, contending in mitigation that he had acted in good faith in order to insure uninterrupted administration of the estate, that he had believed he had the co-executors' permission to sign their names, and that when he discovered he had acted without their authorization, he had moved promptly to declare the petition null and void and had waived his right to any fees for work on the estate.

The New York Court denied as moot the motion of New York disciplinary counsel to suspend Respondent based on the criminal conviction. With respect to the improper signing and notarizing of the clients' signatures, the New York Court concluded that Respondent had violated New York's DR 1-102(A)(4), (5), and (8). In submitting the notarized document to the Surrogate's Court, Respondent had violated New York DR

1-102(A)(5) and (8). The conviction was deemed to warrant the imposition of a disciplinary sanction pursuant to New York Judiciary Law, §§ 90[2], [4][c] & [g].[2]

On April 28, 1997, a Grievance Committee of the Supreme Court of Florida admonished Respondent, based on the findings of the New York Court. *See* Attachment D.

III. MORAL TURPITUDE

Ordinarily, we would deem a moral-turpitude evidentiary proceeding to be mandated by the terms of D.C. Code § 11-2503(a). *Cf. In re Mason*, Bar Docket No. 111-93 (BPR Mar. 1, 1994) (prescribing moral-turpitude inquiry where criminal conviction has not resulted in foreign disbarment). Here, however, Respondent's offense does not involve a serious crime, and the Court has declined to refer the conviction to the Board for an inquiry concerning moral turpitude, notwithstanding our recommendation that the Court do so.

Moreover, New York already has conducted an evidentiary proceeding comparable to that which otherwise might be initiated in this jurisdiction. Respondent is an inactive member of the District of Columbia Bar who maintains an active practice in New York. It would be an undue burden on Respondent and an unproductive use of the District of Columbia disciplinary system's resources to pursue a second evidentiary proceeding in this jurisdiction that would duplicate the New York process.

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[2] The pertinent New York procedural and disciplinary rules are appended as Attachment C.

Accordingly, this jurisdiction should look to the New York proceeding in imposing discipline.

There is precedent for such a course of action. In *In re Rushfield*, Bar Docket No. 518-95 (BPR Mar. 19, 1998), the attorney had been convicted of a non-serious crime and subjected to final discipline in a foreign jurisdiction. Specifically, Rushfield was convicted on a plea of guilty to a three-count misdemeanor information charging the filing of false reporting documents. The criminal conduct had resulted in a reprimand by the Supreme Court of New Jersey and a public censure by the Supreme Court of the State of New York, Appellate Division, First Judicial Department. The Board concluded that reciprocal – albeit not identical – discipline was appropriate. In light of District of Columbia precedent for similar misconduct, the Board recommended a 30-day suspension. A plenary disciplinary proceeding in this jurisdiction was deemed unnecessary. The Board's report currently is pending before the Court without exception.

IV. RECIPROCAL DISCIPLINE

Reciprocal (*i.e.*, identical) discipline is imposed unless the attorney demonstrates, by clear and convincing evidence, that one of the exceptions applies. D.C. App. R. XI, § 11(c); *In re Gardner*, 650 A.2d 693 (D.C. 1994). This jurisdiction recognizes a presumption that the discipline imposed by the disciplining court should be imposed on a reciprocal basis. *In re Gardner, supra; In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992); *In re Velasquez*, 507 A.2d 145 (D.C. 1986) (per curiam). If the sanction imposed by the disciplining court falls within the range

of sanctions that might be imposed in an original case in this jurisdiction, identical discipline is required. *In re Garner*, 576 A.2d 1365 (D.C. 1990). Discipline, whether lesser, greater or identical, may be imposed if the attorney fails to contest it in the manner prescribed by the rules of the Court or the Board. *In re Spann*, No. 96-BG-1672 (D.C. May 21, 1998); *In re Goldsborough*, 654 A.2d 1285 (D.C. 1995).

Here, Respondent was accorded due process; the misconduct violates the ethical rules of the District of Columbia; there is no infirmity of proof; the misconduct does not warrant substantially different discipline in this jurisdiction.

The sanctions for dishonest conduct range from public censure to disbarment. Public censure was imposed where an attorney falsified his class rank on a resume seeking employment as a law professor. *In re Hadzi-Antich*, 497 A.2d 1062 (D.C. 1985). Disbarment has been imposed for serious dishonesty. *E.g., In re Gil*, 656 A.2d 303 (D.C. 1995) (disbarment for dishonest conduct involving misappropriating funds of friend, thereby committing larceny or its statutory equivalent); *In re Goffe*, 641 A.2d 458 (D.C. 1994) (disbarment for dishonesty in two unrelated matters involving forgery of documents).

Here, New York examined the facts and circumstances underlying Respondent's criminal conviction and other dishonest conduct. The New York Court imposed a censure, based on its evaluation of the misconduct and mitigating circumstances. Under all the circumstances, reciprocal discipline is appropriate. *In re Hinden*, 654 A.2d 864 (D.C. 1995) (reciprocal public censure for plagiarism);

In re Hirschberg, 565 A.2d 610 (D.C. 1989) (reciprocal discipline of public reprimand, coupled with probation, for billing clients for personal telephone calls costing in excess of $2,500); *In re Paugh*, Bar Docket No. 424-96 (BPR July 1, 1997) (Board recommends that Court impose reciprocal public censure for, *inter alia*, conduct involving dishonesty).

IV. CONCLUSION

The Board should recommend the discipline of a public censure by the Court, based on the censure by the New York Court, and encompassing Respondent's criminal conviction in New York.

Respectfully submitted,

/s/ Leonard H. Becker
Leonard H. Becker
Bar Counsel

/s/ Michael S. Frisch
Michael S. Frisch
Senior Assistant Bar Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement of Bar Counsel were mailed, first-class, postage-prepaid, to Leonard W. Krouner, Esquire, Two Greyledge Drive, Albany, New York 12211-2054 and delivered by hand to Elizabeth J. Branda, Board on Professional Responsibility, 515 Fifth Street, N.W., Building A, Room 102, Washington, D.C. 20001, this 15th day of July, 1998.

/s/ Michael S. Frisch
Michael S. Frisch
Senior Assistant
Bar Counsel

(SEAL)

OFFICE OF BAR COUNSEL
THE BOARD ON PROFESSIONAL RESPONSIBILITY
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BAR COUNSEL
Leonard H. Becker

DEPUTY BAR COUNSEL
Wallace E. Shipp, Jr.

April 7, 1999

Garland Pinkston, Jr., Clerk
District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Sixth Floor
Washington, DC 20001

Re: In re Krouner
No. 98-BG-446
Bar Docket No. 448-97

Dear Mr. Pinkston:

Please be advised that the Office of Bar Counsel does not note an exception to the report and recommendation of the Board on Professional Responsibility. We do take issue with the Board's assertion, at page 4 of its report, that we did not advise the Board of the appropriate

sanction under Rule XI, § 10(d). Contrary to that assertion, at pages 4-5 of our statement to the Board, dated July 15, 1998, we specifically addressed the consequences of Respondent's conviction of a non-serious crime and directed the Board's attention to *In re Rushfield*, 721 A.2d 167 (D.C.1998), the precedent primarily relied upon by the Board in its recommended disposition. Our statement to the Board also summarized the findings of the New York court, which we attached to the statement as an exhibit.

Sincerely,

/s/ Leonard H. Becker
Leonard H. Becker
Bar Counsel

cc: Elizabeth J. Branda, Executive Attorney
Board on Professional Responsibility

Leonard W. Krouner, Esquire

LHB:MSF:dcw

DISTRICT OF COLUMBIA BAR RULES

XI § 10

Section 10. *Disciplinary proceedings based upon conviction of crime.*

* * *

(c) Action by the Court – Serious crimes. Upon the filing with this Court of a certified copy of the record or docket entry demonstrating that an attorney has been found guilty of a serious crime or has pleaded guilty or nolo contendere to a charge of serious crime, the Court shall enter an order immediately suspending the attorney, notwithstanding the pendency of an appeal, if any, pending final disposition of a disciplinary proceeding to be commenced promptly by the Board. *Upon good cause shown, the Court may set aside such order of suspension when it appears in the interest of justice to do so.*

(d) Action by the Board – Serious crimes. Upon receipt of a certified copy of a court record demonstrating that an attorney has been found guilty of a serious crime or has pleaded guilty or nolo contendere to a charge of serious crime, or any crime that appears to be a serious crime as defined in subsection (b) of this section, Bar Counsel shall initiate a formal proceeding in which the sole issue to be determined shall be the nature of the final discipline to be imposed. *However, if the Court determines under subsection (c) of this section that the crime is not a serious crime, the proceeding shall go forward on any charges under the Code of Professional Responsibility that Bar Counsel may institute.* A disciplinary proceeding under this subsection may proceed through the Hearing Committee to the Board, and the Board may hold such hearings and

receive such briefs and other documents as it deems appropriate, but the proceeding shall not be concluded until all direct appeals from conviction of the crime have been completed.

* * *

Section 11. *Reciprocal discipline.* (a) Definition. As used in this section, "disciplining court" shall include any court of the United States as defined in Title 28, Section 451 of the United States Code, the highest court of any state, territory, or possession of the United States, and any other agency or tribunal with authority to disbar or suspend an attorney from the practice of law in any state, territory, or possession of the United States.

* * *

(c) Standards for reciprocal discipline. Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the Court would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in the District of Columbia; or

(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

Unless there is a finding by the Board under (1), (2), or (5) above that is accepted by the Court, a final determination by a disciplining court outside the District of Columbia or by another court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

* * *

(f) Action by the Court. (1) When no opposition to the recommendation of the Board has been timely filed, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing an opposition.

(2) In matters *not falling under paragraph (1) of this subsection*, the Court shall impose the identical discipline unless the attorney demonstrates, or the court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection (b) of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

* * *

(d) Burden of proof. In a proceeding under this section seeking an order of suspension, the burden of proof shall be upon the Board. In a proceeding under this section seeking an order terminating a suspension, the burden of proof shall be upon the suspended attorney.

* * *

Section 14. *Disbarred and suspended attorneys.* (a) Notice to clients in non-litigated matters. An attorney ordered to be disbarred or suspended shall promptly notify by registered or certified mail, return receipt requested, all clients on retainer and all clients being represented in pending matters other than litigated or administrative matters or proceedings pending in any court or agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order, and shall advise such clients to seek legal advice elsewhere.

* * *

(g) Required affidavit and registration statement. Within ten days after the effective date of an order of disbarment or suspension, the disbarred or suspended attorney shall file with the Court and the Board an affidavit:

(1) Demonstrating with particularity, and with supporting proof, that the attorney has fully complied with the provisions of the order and with this rule;

(2) Listing all other state and federal jurisdictions and administrative agencies to which the attorney is admitted to practice; and

(3) Certifying that a copy of the affidavit has been served on Bar Counsel. The affidavit shall also state the residence or other address of the attorney to which communications may thereafter be directed. The Board may require such additional proof as it deems necessary. In addition, for five years following the effective date of a disbarment or suspension order, a disbarred or suspended attorney shall continue to file a registration statement in accordance with Rule II, stating the residence or other address to which communications may thereafter be directed, so that the attorney may be located if a complaint is made about any conduct of the attorney occurring before the disbarment or suspension. See also section 16(c).

* * *